

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA

WARREN DOUGLAS VANN,)	
)	
Petitioner,)	
)	
vs.)	Case No. CIV-17-292-RAW
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

ORDER

Before the court is the objection of the petitioner to Findings and Recommendation. Petitioner was found guilty on four counts by a jury on May 13, 2003. (02-CR-85). The trial was conducted by former Judge Payne. Petitioner's appeal was dismissed by the United States Court of Appeals for the Tenth Circuit because "no non-frivolous grounds for appeal appear on this record." *United States v. Vann*, 123 Fed.Appx. 898, 899 (10th Cir.2005).

Petitioner filed in this court a petition pursuant to 28 U.S.C. §2255 on July 28, 2017. Judge Payne dismissed the petition as untimely (#14). On June 21, 2018, the United States Court of Appeals for the Tenth Circuit remanded this case, directing that on remand the district court is "to conduct any further proceedings necessary to determine whether Mr. Vann is entitled to equitable tolling." *United States v. Vann*, 728 Fed.Appx. 877 (10th Cir.2018). On June 26, 2018, the case was reassigned to the undersigned (#30).

This court referred the matter to the United States Magistrate Judge for proposed findings of fact and recommendations for disposition. The Magistrate Judge has done so. (#59). Defendant has filed objections (#60) and the government has filed a response (#61).

The court has reviewed the record. *See Gee v. Estes*, 829 F.2d 1005, 1008-09 (10th Cir.1987).

Defendant's objections are detailed and well-argued, but so then is the government's response. The court is persuaded the Magistrate Judge's thorough Findings and Recommendation (#59) should be affirmed and adopted. Petitioner has not demonstrated equitable tolling; therefore, his motion is hereby dismissed.*

Pursuant to Rule 11(a) of the Rules Governing Section 2255 Proceedings, petitioner is denied a certificate of appealability.

It is the order of the court that the motion of the petitioner is hereby dismissed as untimely and this action is administratively closed.

It is so ordered on this 28th day of OCTOBER, 2021.



RONALD A. WHITE
UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF OKLAHOMA

*In a previous order (#58) the court granted petitioner's motion to supplement his petition to add a claim based upon *Rehaif v. United States*, 139 S.Ct. 2191 (2019). As the order stated, the addition was contingent upon the section 2255 motion being found timely. The 2255 motion has been found untimely and therefore the *Rehaif* claim is dismissed as well.